

## § 19.42

## 27 CFR Ch. I (4–1–07 Edition)

withdrawn or removed or if claim involves wines transferred in bond) and date and purpose of such withdrawal or removal, except that in the case of imported spirits lost or destroyed while being transferred from customs custody to TTB bond as provided in § 19.481, the name of the customs warehouse, if any, and port of entry will be given instead of the plant name, number, and address;

(5) Date of the loss or destruction (or, if not known, date of discovery), the cause or nature thereof, and all the facts relative thereto;

(6) Name of the carrier, where a loss in transit is involved;

(7) The name and address of the consignee, in the case of spirits withdrawn without payment of tax which are lost before being used for research, development or testing;

(8) If lost by theft, facts establishing that the loss did not occur as the result of any negligence, connivance, collusion or fraud on the part of the proprietor of the plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them;

(9) In the case of a loss by theft, whether the claimant is indemnified or recompensed for the spirits or wines lost and if so, the amount and nature of indemnity or recompense and the actual value of the spirits or wines, less the tax.

(b) *Claims for abatement, credit or refund.* Claims for abatement of an assessment, or for credit or refund of tax which has been paid or determined, for spirits, denatured spirits, articles, or wines lost or destroyed in bond shall be filed with the appropriate TTB officer. The claims shall set forth the information required under paragraph (a) of this section and, in addition, shall set forth—

(1) The date of assessment or payment (or of tax determination, if the tax has not been assessed or paid) of the tax for which abatement, credit or refund is claimed, and

(2) The name, plant number, and the address of the plant where the tax was determined, paid, or assessed (or name, address and capacity of any other person who paid or was assessed the tax, if the tax was not paid by or assessed against a proprietor).

(c) *Supporting document.* (1) Claims under paragraphs (a) and (b) of this section shall be supported (whenever possible) by affidavits of persons having personal knowledge of the loss or destruction. For claims on spirits, denatured spirits, articles, or wines lost while being transferred by carrier, the claim shall be supported by a copy of the bill of lading.

(2) For claims pertaining to losses of spirits withdrawn without payment of tax and lost prior to being used for research, development or testing, the claim shall be supported by a copy of the proprietor's sample record prescribed in subpart W of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5370))

### § 19.42 Claims on spirits returned to bonded premises.

(a) Claims for credit or refund of tax on spirits which have been withdrawn from bonded premises on payment or determination of tax and which are returned under 26 U.S.C. 5215 shall be filed with the appropriate TTB officer and shall set forth the following:

(1) Quantity of spirits so returned;

(2) Amount of tax for which the claim is filed;

(3) Name, address, and plant number of the plant to which the spirits were returned and the date of the return;

(4) The purpose for which returned; and

(5) The serial number of the gauge record on which the spirits were returned.

(b) If the alcoholic content of the spirits contain at least 92 percent Puerto Rican or Virgin Islands rum, or if the spirits contain rum imported from any area other than Puerto Rico and the Virgin Islands, the claim shall show:

(1) Proof gallons of the finished product derived from Puerto Rican or Virgin Islands spirits, or derived from rum imported from any other area; and

(2) The amount of tax imposed by 26 U.S.C. 7652 or 26 U.S.C. 5001, determined at the time of withdrawal from bond, on the Puerto Rican or Virgin Islands spirits, or on the rum imported from any other area, contained in the product.

## Alcohol and Tobacco Tax and Trade Bureau, Treasury

## § 19.49

(c) Claims for credit or refund of tax on spirits containing eligible wine or eligible flavors must set forth the date and serial number of the record of tax determination and the effective tax rate at which the tax was paid or determined. If this information is not provided, the amount of tax claimed will be based on the lowest effective tax rate applied to the product.

(d) Claims for credit or refund of tax shall be filed by the proprietor of the plant to which the spirits were returned within six months of the date of the return. No interest is allowed on any claims for refund or credit.

[T.D. ATF-198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF-233, 51 FR 28077, Aug. 5, 1986; T.D. ATF-297, 55 FR 18063, Apr. 30, 1990]

### § 19.43 Claims relating to spirits lost after tax determination.

Claims for abatement, credit, or refund of tax under this part, relating to losses of spirits occurring on bonded premises after tax determination but prior to physical removal from such premises, shall be prepared and filed as provided in, and contain the information called for under § 19.41(b) and be supported by documents as provided under § 19.41(c).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

### § 19.44 Execution of claims and supporting documents.

All claims filed under this part shall be filed on Form 2635 (5620.8). Claims for abatement, remission, credit, or refund shall (a) show the name, address, and capacity of the claimant, (b) be signed by the claimant or his duly authorized agent, and (c) be executed under the penalties of perjury as provided in § 19.100. Supporting documents required by this part to be submitted with a claim shall be attached to the claim and shall be deemed to be a part thereof. The appropriate TTB officer may require the submission of additional evidence in support of any claim filed under this part when

deemed necessary for proper action on the claim.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended (26 U.S.C. 5008); sec. 807, Pub. L. 96-39, 93 Stat. 285 (26 U.S.C. 5215))

[T.D. ATF-198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985; T.D. ATF-251, 52 FR 19313, May 22, 1987]

### § 19.45 Claims for credit of tax.

Claims for credit of tax, as provided in this part, may be filed after determination of the tax whether or not the tax has been paid. The claimant may not anticipate allowance of a credit or make an adjusting entry in a tax return pending action on the claim.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended (26 U.S.C. 5008); sec. 807, Pub. L. 96-39, 93 Stat. 285 (26 U.S.C. 5215))

### § 19.46 Adjustments for credited tax.

When notification of allowance of credit is received from the appropriate TTB officer, including notification of credit for tax on spirits exported with benefit of drawback as provided in 27 CFR part 28, the claimant shall make an adjusting entry and explanatory statement (specifically identifying the notification of allowance of credit) in the next excise tax return (or returns) to the extent necessary to exhaust the credit.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended, 1336, as amended (26 U.S.C. 5008, 5062))

[T.D. ATF-198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF-219, 50 FR 51387, Dec. 17, 1985; T.D. TTB-8, 69 FR 3829, Jan. 27, 2004]

## Subpart Ca—Special (Occupational) Taxes

SOURCE: T.D. ATF-271, 53 FR 17541, May 17, 1988, unless otherwise noted.

### § 19.49 Liability for special tax.

(a) *Proprietor of distilled spirits plant—*  
(1) *General.* Except as provided in § 19.906, every proprietor of a distilled spirits plant shall pay a special (occupational) tax at a rate specified by § 19.50. The tax shall be paid on or before the date of commencing business as a distilled spirits plant proprietor, and thereafter every year on or before July 1. On commencing business, the